

Message

**From:** Levine, MaryEllen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F59EF87B9924425897C750435BAD5522-MLEVINE]  
**Sent:** 9/25/2018 7:04:00 PM  
**To:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Subject:** FW: Heads up on 316(b) briefings/questions  
**Attachments:** BOR\_316(b)\_Hydro.pptx; Comment\_NHA&UWAG\_07112018\_.PDF

This 316(b) issue has taken on a new dimension. I need to call Adam Klinger.

- *Mary Ellen*

Mary Ellen Levine  
Assistant General Counsel  
Water Law Office, Office of General Counsel  
7510 C WJC North  
(202) 564-1345

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**From:** Witt, Richard  
**Sent:** Tuesday, September 25, 2018 3:02 PM  
**To:** Levine, MaryEllen <levine.maryellen@epa.gov>  
**Subject:** FW: Heads up on 316(b) briefings/questions

Here is the UWAG document. It's the second attachment.

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**From:** Ramach, Sean  
**Sent:** Friday, September 21, 2018 5:22 PM  
**To:** Wood, Robert <Wood.Robert@epa.gov>  
**Cc:** Witt, Richard <Witt.Richard@epa.gov>; Shriner, Paul <Shriner.Paul@epa.gov>; Zobrist, Marcus <Zobrist.Marcus@epa.gov>  
**Subject:** RE: Heads up on 316(b) briefings/questions

We have worked with Paul and there is not much in the record for the EF rule nor the other rules. Ex. 5 Deliberative Process (DP)

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Another salient point, this is the first NPDES permit for most of these facilities...they were not permitted and some settlement agreements with the USACE on the Columbia River dams prompted all of the dams to request permits to prevent citizen suits.

R10 is issuing a GP for Idaho and received comments on the 316(b) from UWAG and NHA. Attaching here. They basically say because in the proposed rule we said the generation water is not subject to the rule that they did not comment further as they assumed that was the same water. Most of the intakes are in the penstocks or the scroll cases for the turbines which withdraws from the generation water. Ex. 5 Deliberative Process (DP)

**Ex. 5 Deliberative Process (DP)**

The generation water remains a WOTUS under two court rulings. Attaching the presentation we gave them that lays out if you have a NPDES permit and use cooling water, the statute applies as well as the overview of the court cases. The EF rule applies if you meet its applicability criteria.

My understanding is BOR are still saying the statute doesn't apply because of the rule process.

Ex. 5 Deliberative Process (DP)

### Ex. 5 Deliberative Process (DP)

That meeting that you identified where Anna W. met with Kristy may very well have been on this topic in whole or in part.

FYI, R1 is also issuing a GP for hydroelectric that has a 316(b) determination under BPJ.

Also, I spoke with Terry Cheek at TVA at one of the EPRI meetings on this issue and he acknowledged 316(b) applies to hydroelectric facilities...he was concerned over the scope of the requirements included in the proposed Idaho permit. We worked with R10 as the

Ex. 5 Deliberative Process (DP)

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Cheers,

*Sean Ramach*

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**From:** Wood, Robert  
**Sent:** Friday, September 21, 2018 4:46 PM  
**To:** Ramach, Sean <[Ramach.Sean@epa.gov](mailto:Ramach.Sean@epa.gov)>  
**Cc:** Witt, Richard <[Witt.Richard@epa.gov](mailto:Witt.Richard@epa.gov)>  
**Subject:** RE: Heads up on 316(b) briefings/questions

Hi Sean,

Thanks for the heads up. I'm a little rusty here. Is there reg text, preamble or other material you could point me to that clarifies the basis for 316(b) application to hydroelectric dams? Thanks

Rob

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Robert Wood, Director  
Engineering and Analysis Division  
U.S. EPA Office of Water  
202-566-1822

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**From:** Ramach, Sean  
**Sent:** Friday, September 21, 2018 4:35 PM  
**To:** Wu, Jennifer <[Wu.Jennifer@epa.gov](mailto:Wu.Jennifer@epa.gov)>; Wood, Robert <[Wood.Robert@epa.gov](mailto:Wood.Robert@epa.gov)>; Damico, Brian <[Damico.Brian@epa.gov](mailto:Damico.Brian@epa.gov)>; Zobrist, Marcus <[Zobrist.Marcus@epa.gov](mailto:Zobrist.Marcus@epa.gov)>; Gutierrez, Sally <[Gutierrez.Sally@epa.gov](mailto:Gutierrez.Sally@epa.gov)>; Levine, MaryEllen <[levine.maryellen@epa.gov](mailto:levine.maryellen@epa.gov)>; Witt, Richard <[Witt.Richard@epa.gov](mailto:Witt.Richard@epa.gov)>  
**Cc:** Shriner, Paul <[Shriner.Paul@epa.gov](mailto:Shriner.Paul@epa.gov)>  
**Subject:** RE: Heads up on 316(b) briefings/questions

Thanks Jenny. Will Courtney be the attorney? Just so Richard can reach out as needed?

All, see Jenny's email below regarding Bureau of Reclamation elevating whether 316(b) applies to hydroelectric facilities.

The Region has contacted Andrew and plans to follow up with OGC next week.

Cheers,

*Sean Ramach*

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**From:** Wu, Jennifer  
**Sent:** Friday, September 21, 2018 3:21 PM  
**To:** Ramach, Sean <[Ramach.Sean@epa.gov](mailto:Ramach.Sean@epa.gov)>; Shriner, Paul <[Shriner.Paul@epa.gov](mailto:Shriner.Paul@epa.gov)>  
**Subject:** Heads up on 316(b) briefings/questions

Hi Sean and Paul,

As in my voicemail, I wanted to give you both the heads up that BOR called me yesterday to follow up on our call with them on 9/12. They said they appreciated the presentation and learned a lot, but still "agreed to disagree" on 316(b) applicability to hydroelectric dams. **Ex. 5 Deliberative Process (DP)**

At this point, we're not inclined to delay permit issuance unless they contact the Administrator, and we are told to delay the permit. I've been told to proceed with developing the permit unless there are other reasons to pause the permit (e.g., they're missing a number of outfalls in their application). Still, Dan Opalski, the Office Director was at a Federal Caucus Executive Board meeting which includes senior managers in the federal family, including BOR and the Corps. He acknowledged concerns on 316(b) and said while we still believe 316(b) applies, he would run it up the chain at EPA HQ. He contacted Andrew Sawyer at OWM, and our attorney is going to prepare briefing materials to run it up OGC next week. So FYI in that you may hear about it. If you'd like to talk more, feel free to call. Otherwise, I'll keep you in the loop to make sure informed esp for anything that might affect you.

Thanks!  
Jenny Wu  
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